

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 98-0688**  
**Retail Sales Tax, Withholding Tax**  
**For The Tax Periods: 1995, 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Retail Sales Tax – Responsible Officer Liability**

**Authority:** IC 6-2.5-2-1, IC 6-2.5-2-2, IC 6-2.5-9-3, IC 6-3-4-8, *Indiana Department of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995).

The Taxpayer disputes the determination that he had a duty to remit the corporation's retail sales tax and withholding tax.

**STATEMENT OF FACTS**

Taxpayer was assessed for retail sales and withholding taxes as a responsible officer. Taxpayer was president of the company. A receiver was appointed for the company on February 23, 1996. More facts will be provided as necessary.

**I. Retail Sales Tax – Responsible Officer**

**DISCUSSION**

A gross retail (sales) tax is imposed on retail transactions made in Indiana. IC 6-2.5-2-1. While this sales tax is levied on the purchaser of retail goods, it is the retail merchant who must "collect the tax as agent for the state." IC 6-2.5-2-2. Individuals may be held personally responsible for failing to remit any sales tax. Pursuant to IC 6-2.5-9-3:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Also, an income tax is assessed on wages that employers pay to their employees. The employer is responsible, and liable, for deducting, retaining, and paying "the amount prescribed in [the] withholding instructions." IC 6-3-4-8(a). Like the sales tax, employers hold the withholding tax in trust for the state. IC 6-3-4-8(f) states in relevant part:

All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of IC 6-3 shall hold the same in trust for the state of Indiana....

Pursuant to *Indiana Department of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995): “ The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid”. The court also stated, “where the individual was a high ranking officer, we presume that he or she had sufficient control over the company’s finances to give rise to a duty to remit the trust taxes.” *Id.*

Taxpayer was President of the company. However, in February, 1996, Taxpayer was obligated to turn over all records to a receiver who was appointed to oversee the operation of the business. Taxpayer offers no argument for periods prior to receivership.

From the cited facts, the Department finds Taxpayer had sufficient authority or requisite control to give rise to a duty to remit trust taxes collected on behalf of the state prior to the appointment of the receiver. However, upon the appointment of the receiver, Taxpayer did not maintain the requisite control or authority, and thus, did not have a duty to remit trust taxes.

### **FINDING**

The Taxpayer’s protest is sustained in part and denied in part. Taxpayer did not have a duty to remit trust taxes after February 23, 1996. However, Taxpayer did have a duty to remit prior to this date and is responsible for the trust tax prior to the receivership.